IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

WEDNESDAY, THE 14TH NOVEMBER 2007 / 23RD KARTHIKA 1929

WP(C).No. 33618 of 2007(B)

OS.285/2006 of PRINCIPAL SUB COURT,ERNAKULAM
.....

PETITIONER:

SOMASEKHARA PILLAI,
S/O VISWANATHA PILLAI, AGED 53 YEARS,
KAYAMMADATHIL HOUSE, KILIKOLLOOR VILLAGE,
ATTINGAL P.O., THIRUVANANTHAPURAM DIST.

BY ADV. SRI.A.BALAGOPALAN
SRI.A.RAJAGOPALAN

RESPONDENTS:
---

1. SRI. C.UNNIKRISHNAN NAIR,
S/O CHELLAPPAN PILLAI, AGED 52,
QUARTER NO.F-6, TCC MAIN COLONY,
UDYOGAMANDAL P.O., ALUVA.

2. SRI. NASEEBUDDIN, S/O V.M.ISMAIL,
AGED 42, VARAPOTHU VEETTIL, CHELAKULAM KARA,
VENGOLA P.O., PATTIMATTOM VILLAGE,
KUNNATHUNADU TALUK.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 14/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.Krishnan, J.

==========

W.P(C).No.33618 of 2007

==========

Dated this the 14th day of November, 2007.

JUDGMENT

This Writ Petition is filed seeking a direction to the Principal Subordinate Judge to issue a certified copy of the order on issue No.5 and for a further direction to stay the trial of the suit. A perusal of the plaint would reveal that the suit is filed for setting aside a document and the valuation is done under Section 40 of the Court Fees Act. An issue whether the suit is valued properly for the purpose of court fee and jurisdiction was raised and it was answered in favour of the plaintiff. Defendants want to challenge that finding on the ground that the property is situated in a very costly area at Vazhakala and it will fetch the value of Rs.5 lakhs per cent and therefore, the court fee paid is not correct. Now the prayer is to direct the Subordinate Judge to issue a certified copy of the order, so as to challenge that matter before the appropriate authority. The order was passed on 7.8.2007 and it

is submitted that the defendants have applied for certified copy on 8.8.2007. Under Section 12 of the Court Fees Act, the question of correctness of the court fee has to be agitated and decided at least before the trial commences. So, if the matter is proceeded with by including in the list, it will adversely affect the contention of the defendants in the suit.

2. Therefore, I direct the Subordinate Judge, Ernakulam to issue certified copy of the order within a period of three weeks from today and also direct the court to remove the case from the list for a period of one month.

Writ Petition is disposed of accordingly.

M.N.Krishnan,
Judge.

ess 14/11